HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 522 of 2001
Old F.A. No. 441 of 1995

State of U.P. **…Appellant.**

Versus

Inderdhawaj Chand Son of Sri Bahadur Chand,
R/O village Jiwi, Patti Khareyat, District Pithoragarh.
….Respondent.

Sri Nand Prasad, Learned Standing Counsel for the appellant.
Sri V.S.Pant, Adv., learned counsel for respondent.

Dated August 04, 2006
P.C: Hon. B.S. Verma, J.

This appeal arises out of the judgment and decree dated 10-5-1995, passed by the then District Judge, Pithoragarh, in Original Suit No. 23 of 1978, State of U.P. Vs. Inderdhawaj Chand, whereby the learned District Judge dismissed the suit of the plaintiff-appellant for recovery for Rs. 14,648-52 against the defendant-respondent

Relevant facts necessary for a just decision of the appeal are that the State filed a suit for recovery of Rs. 14,648-52 against the defendant alleging that the respondent-defendant worked under the Assistant Engineer, P.W.D. Dharchula (***for short the Department***) during the years 1967-68 1968-89 as Store Keeper and he was required to maintain the entries of receipts and delivery of the departmental articles in the stock register. The respondent was transferred to Uttarkashi in the month of April 1968 and consequently, he prepared the charge memo and the stock in the charge of respondent was delivered to Sri Y.S.Rawat, Junior Engineer and signature of Sri Rawat was obtained in token of having received the entire stock. Then the respondent was relieved from his post to join at the new station. According to the plaintiff-State before handing over charge by the respondent, physical verification of the stock was done by the Assistant Engineer of the department, on the basis of which the articles were handed over to the Junior

Engineer, Sri Rawat and the deficiency was noted in the charge memo, which has been annexed as Annexure B to the plaint. On enquiry made by the department, it was found that the respondent had shown 60 bags of cement to have been issued to contractor Trilok Singh on 4-3-1968 and 35 bags of cement to Sri K.S.Bhandari on 12.4.1968 but no U.S.R. or other document was obtained by the respondent in support of delivery of the said items. Moreover, the respondent had shown entry in favour of one Dhan Singh contractor in Form No. 8 stock register, while no such contractor was engaged with the Department. Therefore, on the basis of deficiency of stock shown in the charge-memo, the suit has been filed for recovery of price of shortage of items to the tune of Rs. 15,580-16 and after adjustment of security amount of Rs. 931-64, recovery of balance amount has been sought by way of present suit.

The defendant-respondent contested the suit and filed his written statement. It was asserted that at the time of his transfer, the answering defendant was ill and was on leave, therefore, the entire keys and stock was in the custody of Sri S.C. Arora, Junior Engineer of the Department and the charge of stock was handed over by said S.C.Arora and not by the defendant. It was asserted that no verification of stock was done in his presence and no list thereof was drawn. It was stated that Sri S.C.Arora, who was having charge of stock at the relevant time was not arrayed as defendant to the suit. It was stated that the defendant had already retired from service in the year 1976 and the documents were fabricated against him and suit has been filed on wrong facts.

The learned District Judge framed necessary issues in the suit, recorded the evidence led by the parties, heard and after perusing the evidence on record, came to the conclusion that physical charge of stock from the defendant was taken after verification of stock from 15.4.1968 to 19-.4-1968 and rest of the proceedings wee fabricated later-on so as to implicate the defendant. The enquiry alleged to have been made by the department regarding

deficiency of stock was found to be cooked up. It was held that the physical verification of stock was not done by the Department when the charge was handed over to the Incharge Junior Engineer. It was concluded that the recovery of deficiency of stock ought to have been made from the in-charge Junior Engineer and not from the defendant. It was further held that the defendant had handed over charge to In-charge Junior Engineer between 15th April and 19th April, 1968 after having verified the stock and articles in the charge of the transferred store keeper-defendant. It was concluded that at the time of handing over charge by the defendant, there was no deficiency in the inventory of store, therefore, the defendant was held to be not liable to pay amount claimed by the plaintiff. Accordingly, the suit of the plaintiff-appellant was dismissed with costs.

The impugned judgment and decree has been assailed mainly on the ground that the learned District Judge has not properly appreciated the evidence of the witnesses produced by the plaintiff, therefore, the judgment and decree passed by the learned District Judge is wholly illegal and liable to be set aside.

I have heard learned counsel for the parties and perused the entire material on record including the lower court record.

Before entering into the discussion and examining the evidence on record, it is pertinent to note that the defendant Inder Dhawaj was posted under the command of the plaintiff-appellants during the years 1967 to 1968-89 as Store Keeper in the office of the Assistant Engineer Dharchula. It is admitted that the defendant was transferred to Uttarkashi. According to the plaintiffs, there was deficiency in the stock of articles in the charge of the defendants and as per plaintiffs, the stock verification was done in the month of April 1968 and shortage was detected in presence of the defendant. It is admitted that the defendant-store keeper had already been retired from service in the year 1976. The plaintiff-department slept over

the matter wherein there was loss to the Government to the tune of more than Rs. Fifteen thousand not till the retirement of the defendant but till the years 1987. It is very surprising that when the stock was found deficient at the time of handing over charge by the defendant in the month of April, 1968, the Department had kept mum for about 19 years. Had there been truth in the assertion made by the department that deficiency was found at the time of handing over charge by the defendant, there was nothing to prevent the Department to have initiated suitable steps for making recovery from the salary of the official concerned and the departmental officer posted at Uttarkashi would have been informed regarding the shortage. It was fully known to the Department that the defendant was going to retire within a couple of years, but even then, it was not thought proper to make recovery from the defendant during his service period. This conducted on the part of the plaintiff has not so far been explained either before the court below or in this appeal. In my view, this is the crux of the entire case that the present case might have been cooked up with some ulterior motive against the defendant. I refrain from recording any specific finding on this issue, as the defendant-respondent has not filed any counter-claim or cross-objection before this Court.

Now coming to the evidence led by the parties, P.W.1 Vidya Sagar Gupta, who is Assistant Engineer of the Department, has deposed in support of the case of the plaintiff, but in his cross-examination, he has clearly admitted that in the measurement book here is no mention of shortage of stock against the defendant. This witness unhesitatingly admitted that no shortage was detected at the time of handing over charge by the defendant, which was taken over by Sri Y.S. Rawat, Junior Engineer. The cross-examination of this witness has completely shattered the case of the plaintiff and the learned District Judge has dealt with the evidence at page nos. 4,5, 6 and 7 of the impugned judgment. The District Judge has dealt with each and every aspect of the case. I need not reiterate the entire evidence for the simple reason that the plaintiff Department has

failed to patch up the lacuna for not taking any action worth the name from the year 1968 till the institution of the present suit.

The learned District Judge has rightly dismissed the suit of the plaintiff and it has rightly been concluded that the case against the defendant had been cooked up with extraneous considerations. There is no infirmity or illegality in the findings recorded by the District Judge.

The learned Standing Counsel could not point out any such infirmity in the impugned judgment and decree, which may lead to take a different view than that of the trial court. There is no merit in the present appeal preferred by the State, which is liable to be dismissed outright.

The appeal is hereby dismissed. The judgment and decree, under challenge, is hereby affirmed. Costs easy.

(B.S. Verma, J.)

RCP